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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,463	02/07/2002	David Sokolsky	110747-1003	3008

7590 10/08/2003

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EXAMINER

MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/072,463	Applicant(s) SOKOLSKY ET AL.	
	Examiner Jila M Mohandesi	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Liu et al. (5,047,252). Liu `252 discloses a containered arrangement of condiment packets (coffee), comprising, a container having a top, a bottom and an outer peripheral wall (conventional cup or mug, see column 3, lines 11-13), a plurality of packets (pouches 12) arranged in said container generally like spokes on a wheel and being maintained in said generally spokes-on-a-wheel arrangement by said outer peripheral wall of said container. See Figures 1-14B embodiments.

With respect to claim 6, see Figure 4 embodiment.

3. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Syroka et al. (4,141,997). Syroka `997 discloses a containered arrangement of condiment packets (coffee), comprising, a container having a top, a bottom and an outer peripheral wall (conventional cup or mug 14), a plurality of packets (pouches 24, 26) arranged in said container generally like spokes on a wheel and being maintained in said generally spokes-on-a-wheel arrangement by said outer peripheral wall of said container. See Figure 1 embodiment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu '252.

With respect to claims 4 and 9, official notice is taken that it is old and conventional to make containers and packages from transparent material so that the contents are visible from the outside. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claims 10-12, which further modifies the side of the packets and the container, it would have been an obvious matter of design choice to modify the area of the size of the packets and container, since such a modification would have involved a mere change in the size and shape of a component. A change in size and shape is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955) and *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Conclusion

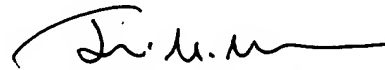
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are packages analogous to applicant's instant invention.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M Mohandesi whose telephone number is (703) 305-7015. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

**JILA M. MOHANDESI
PRIMARY EXAMINER**



Jila-M Mohandesi
Primary Examiner
Art Unit 3728

JMM
September 29, 2003